IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
1. S.B. Civil First Appeal No.85/1999

Gram Panchayat Soorwal through its Sarpanch
...defendant-appellant
Versus
Krishi Upaj Mandi Samiti through its Secretary
Sawai Madhopur
...plaintiff-respondent

2. S.B. Civil First Appeal No.281/2000

Krishi Upaj Mandi Samiti through Secretary,
Sawai Madhopur
AND State of Rajasthan through Collector,
Sawai Madhopur
...defendants-appellants
Versus
Prabhulal S/o Gyarsi
...plaintiff-respondent
AND
Gram Panchayat Soorwal through its Sarpanch
AND Bajranga S/o Shri Bhairu Meena
...defendant-respondents

Date of Judgment ::: 11th July, 2007

PRESENT
HON'BLE MR. JUSTICE N.K. JAIN

Presence in Appeal No.85/1999

Shri J.P. Goyal, Counsel for appellant
Shri D.P. Pujari, Counsel for respondent

Presence in Appeal No.281/2000

Shri D.P. Pujari, Counsel for appellant No.1
Shri S.N. Gupta, Dy. G.A., for appellant No.2
Shri Ganesh Meena, Counsel for respondent No.2

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By the Court:-

These two appeals, although, directed against two different judgments arising out of two different suits for damages but in respect of common agriculture land bearing Khasra No.3080 measuring one bigha one biswa and in both the suits there were common parties i.e. Krishi Upaj Mandi Samiti, Sawai Madhopur and Gram Panchayat Soorwal, therefore, I think it fit and proper to decide both the appeals by this common judgment.

Common facts of both the appeals are that one Prabhulal, plaintiff in S.B. Civil First Appeal No.281/2000, was recorded tenant of the disputed agriculture land bearing Khasra No.3080 measuring one bigha one biswa. The land was vacant land and situated within the territorial jurisdiction of Gram Panchayat Soorwal. The Gram Panchayat Soorwal, vide its order dated 2nd May, 1984, allotted the said land to Krishi Upaj Mandi Samiti, Sawai Madhopur, to develop Haat Bazar. The possession of the land was also handed over to Krishi Upaj Mandi Samiti, Sawai Madhopur, by Gram Panchayat Soorwal. The Krishi Upaj Mandi Samiti, Sawai Madhopur, spent some money to develop Haat Bazar on the said land by raising construction of 'chabutra' etc. Prabhulal, being aggrieved with the order of allotment dated 2nd May, 1984, filed an appeal before the Collector Sawai Madhopur, which was dismissed on 29th May, 1985. When construction started on his land, Prabhulal also filed Civil Suit in Civil Court, which was also dismissed. Later on Prabhulal filed S.B. Civil Writ Petition No.1170/1989 before this Court, which was allowed vide judgment dated 27th March, 1996 (Exhibit-5 in First Appeal No.281/2000), and resolution passed by

Gram Panchayat, Soorwal, was quashed and set-aside. The Krishi Upaj Mandi Samiti, Sawai Madhopur, was directed to remove the construction made on the disputed land. This Court also observed that the petitioner i.e. Prabhulal would be free, if so advised, to claim damages from the respondents No.3 and 4, which might have been caused to him due to non-cultivation thereof because of construction made thereon. Under the aforesaid circumstances, two different suits for damages were filed in the trial court; one by Prabhulal on 21st October, 1997 against (1) the State Government, (2) Krishi Upaj Mandi Samiti Sawai Madhopur, (3) Gram Panchayat Soorwal and (4) Bajranga S/o Shri Bhairu Meena; and another suit was filed by the Krishi Upaj Mandi Samiti, Sawai Madhopur, against Gram Panchayat, Soorwal.

S.B. Civil First appeal No.85/1999

Brief facts giving rise to this appeal are that Krishi Upaj Mandi Samiti, Sawai Madhopur, filed a suit for damages for Rs.1,42,000/- in the trial court against Gram Panchayat, Soorwal, wherein it was pleaded that initially Gram Panchayat, Soorwal, allotted five bigha land for Haat Bazar out of Khasra No.3373, but, subsequently, it was cancelled and one bigha one biswa land was allotted to it out of Khasra No.3080. In pursuance of the order of Gram Panchayat, Soorwal, dated 15th January, 1984, the Krishi Upaj Mandi Samiti, Sawai Madhopur, got possession over 23000 square yard land and started raising construction. A tender was invited and contract was given and payment of Rs.71,000/- was made

by it. It was also pleaded that a sum of Rs.71,000/- was also become payable on account of interest on the aforesaid amount of Rs.71,000/-, therefore, the suit for damages was filed for Rs.1,42,000/-. The suit was contested by Gram Panchayat, Soorwal, and it was contended that action of Gram Panchayat, Soorwal, was bona-fide and there was no mala-fide in it. The land was lying vacant within the territorial jurisdiction of Gram Panchayat, Soorwal, therefore, it was allotted to the Krishi Upaj Mandi Samiti, Sawai Madhopur. It was also pleaded that no notice in accordance with the provisions of Rajasthan Panchayati Raj Act, 1994 (for short, 'the Act of 1994') was given to the defendant before filing the suit nor the suit has been filed within a period of six months as prescribed under Section 109 of the Act of 1994.

The trial court, on the basis of the pleadings of the parties, framed five issues on 13th October, 1995, which are reproduced in the impugned judgment.

Issue No.1 was as to whether the plaintiff is entitled to receive the total amount of Rs.1,42,000/- (Rs.71,000/- as costs of construction and Rs.71,000/- towards interest thereon), from the defendant. Issue No.3 was as to whether the plaintiff served a notice on the defendant in accordance with the provisions of the Act of 1994. Issue No.4 was as to whether the suit was filed after expiry of the period of limitation. The plaintiff, in support of its case, examined PW-1 Pharebi, PW-2 Radheyshyam and PW-3 Keshav Singh, and produced documentary evidence Exhibit-1 to Exhibit-8. The defendant did not produce any evidence, oral or

documentary.

The learned trial court, after considering the submissions of learned counsel for both the parties as well as record of the case, vide impugned judgment dated 18.12.1998, decreed the suit of the plaintiff Krishi Upaj Mandi Samiti, Sawai Madhopur, for a sum of Rs.71,000/-, with interest at the rate of 6% per annum, from the date of filing of the suit till the date of realization of the amount.

Being aggrieved with the same, the Gram Panchayat has filed S.B. Civil First Appeal No.85/1999.

S.B. Civil First Appeal No.281/2000:-

The relevant facts, in brief, giving rise to filing of this appeal are that plaintiff Prabhulal filed a suit for damages for Rs.3,65,600/- in the Court of District Judge, Sawai Madhopur, against (1) the State Government, (2) Krishi Upaj Mandi Samiti, Sawai Madhopur, (3) Gram Panchayat, Soorwal, and (4) Bajranga S/o Bhairu, wherein it was pleaded that he was recorded tenant of the disputed agriculture land bearing Khasra No.3080 measuring one bigha, which was wrongly allotted by Gram Panchayat, Soorwal, to Krishi Upaj Mandi Samiti, Sawai Madhopur; and Krishi Upaj Mandi Samiti, Sawai Madhopur, wrongly raised construction on it to develop Haat Bazar thereon, and, in these circumstances, he could not cultivate his land for about 12 years, thus he suffered loss of Rs.28,800/- per year and claimed damages for Rs.3,65,600/-. The defendant no.2 Krishi

Upaj Mandi Samiti, Sawai Madhopur, filed its written statement wherein it did not dispute issuance of 'patta' by Gram Panchayat, Soorwal, but pleaded that it did not raise any construction on the land belonging to the plaintiff, and the Haat Bazar was constructed on the land which was allotted to it by Gram Panchayat, Soorwal. It was also pleaded that mistake was committed by Gram Panchayat, Soorwal, and, therefore, it also filed a suit against Gram Panchayat, Soorwal, which has been decreed by the court of District Judge, Sawai Madhopur, for a sum of Rs.71,000/- with interest thereon, vide judgment dated 18.12.1998. It was pleaded on behalf of the defendant that the plaintiff did not serve a notice under Section 31 of the Rajasthan Agricultural Produce Markets Act, 1961 (for short, 'the Act of 1961'), before instituting the present suit. It was also pleaded that the suit was barred by limitation. Therefore, it was prayed that the suit of the plaintiff be dismissed.

Defendant No.4 Bajranga filed his separate written statement.

On the basis of pleadings of the parties, the learned trial court framed five issues on 9th March, 2000, which are reproduced in the impugned judgment passed by the trial court. Issue No.1 was whether the defendant no.2 deprived the plaintiff from cultivating his land by raising construction of Haat Bazar on the land in dispute. The issue No.2 was whether the plaintiff was entitled to damages from defendants for a sum of Rs.3,65,600/-. The issue No.3 was whether the

suit is liable to be dismissed as the same is barred by limitation as the same was instituted after expiry of limitation. Issue No.4 was whether the suit against Krishi Upaj Mandi Samiti Sawai Madhopur is not maintainable for want of notice under Section 31 of the Act of 1961. The plaintiff Prabhulal Meena examined himself as PW-1 and Sirajuddin as PW-2, and produced documentary evidence Exhibit-1 to Exhibit-11. The defendant examined DW-1 Pharebilal.

The learned trial court, after considering the record of the case and submissions of learned counsel for both the parties decided Issues No.3 and 4 against the defendants and decreed the suit of the plaintiff for a sum of Rs.96,593/- with interest thereon at the rate of 12% per annum. Being aggrieved with the same, the Krishi Upaj Mandi Samiti as well as the State of Rajasthan, both, have preferred S.B. Civil First Appeal No.281/2000.

Contentions, findings and conclusion in both Appeals:-

Learned counsel for the appellants in both the cases contended that the suit of the plaintiff in both the cases was liable to be dismissed for want of proper notice in accordance with Section 109 of the Act of 1994 and Section 31 of the Act of 1961. They further contended that the limitation for filing the suit was six months whereas suit was instituted after the expiry of a period of limitation i.e. 6 months, but the trial court, without considering the submissions of the

defendants in both the cases, wrongly decided the Issue relating to notice as well as limitation in favour of the plaintiffs and against the defendants.

Krishi Upaj Mandi Samiti Sawai Madhopur is the respondent in Appeal No.85/1999 and the appellant in Appeal No.281/2000.

Learned counsel for Krishi Upaj Mandi Samiti Sawai Madhopur, in Appeal No.281/2000, also contended that the suit filed by Prabhulal against Krishi Upaj Mandi Samiti Sawai Madhopur was barred by limitation and was liable to be dismissed for want of proper notice under Section 31 of the Act of 1961. However, he could not defend himself in Appeal No.85/1999 in respect of submissions made by Shri J.P. Goyal, learned counsel for the appellant Gram Panchayat relating to notice as well as limitation. A notice of Appeal No.281/2000 was given to plaintiff Prabhulal but despite service of notice of appeal neither he himself remained present nor anybody on his behalf is present.

The learned counsel for both the parties also argued their respective cases on other Issues – like quantum of damages awarded in both the cases, but before dealing with their submissions in respect of other Issues, I would like to deal with the Issue relating to notice as well as limitation for filing the suit.

In Appeal No.85/1999 Issue No.3 was in respect of notice, whereas Issue No.4 was in respect of limitation to file the suit. The plaintiff Krishi Upaj Mandi Samiti

Sawai Madhopur filed the suit against Gram Panchayat Soorwal and in Para No.10 of the plaint referred article 113 of the Limitation Act, 1963, and pleaded that the suit is within time. The cause of action for filing the suit was mentioned in Para No.8 as 27.3.1997 i.e. the date of judgment of the Rajasthan High Court. The date of judgment of the Rajasthan High Court is 27.3.1996 but it was wrongly typed in Para No.8 of the plaint as 27.3.1997.

I have considered the finding of the trial court in respect of Issues No.3 and 4. The trial court has referred notice Exhibit-7 given by Advocate Ramjidas Goyal to Sarpanch of Gram Panchayat Soorwal. The notice (Exhibit-7) clearly shows that it was given to Sarpanch of Gram Panchayat Soorwal but it was not given to Gram Panchayat against whom plaint was filed. It further shows that notice was given for 30 days and not for the period of two months as required under Section 109 of the Act of 1994.

I have also considered the finding of the trial court in respect of Issue No.4 and it clearly shows that neither the date of cause of action has been referred and considered, nor the date of filing the suit has been referred and considered in the context of Section 109 of the Act of 1994 and Section 31 of the Act of 1961 are reproduced as under:-

> **“109. Suits etc., against Panchayat, Panchayat Samiti and Zila Parishad**.- (1) No suit or other civil proceeding against a Panchayat Raj Institution or

> against any member, officer or servant thereof or against any person acting under the direction of a Panchayati Raj Institution or any member, officer or servant thereof for anything done or purporting to be done under this Act in its or his official capacity-
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> (a) shall be instituted until the expiration of two months after notice in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the nature of the relief which he claims, has been delivered or left at its office or, in the case of a member, officer, servant or person as aforesaid, delivered to him or left at the office or at his usual place of abode, and the plaint shall in each such case contain a statement that such notice has been so delivered or left, or
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> (b) shall be instituted, unless it is a suit for the recovery of immovable property or for a declaration title thereto, otherwise than within six months after transfer next the accrual of the alleged cause of action.
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> (2) The notice referred to in sub-section (1), when it is intended for a Panchayat, Panchayat Samiti or a Zila Parishad, shall be addressed to the Sarpanch, Vikas Adhikari or the Chief Executive Officer respectively.”

The above quoted provision makes it clear that before instituting a suit against a Panchayat Raj Institution or against any member, officer or servant thereof, a notice of two months is required to be given

before institution of suit and period of limitation has been prescribed as six months under clause (b) of sub-section (1) of Section 109 of the Act of 1994. A bare perusal of the notice (Exhibit-7) dated 9.12.1996 shows that it was given for 30 days and not for two months as required by clause (a) of sub-section (1) of Section 109 of the Act of 1994. The cause of action in the plaint has been mentioned as the date of judgment of the High Court, which is on the record as Exhibit-6, and the judgment is dated 27.3.1996, whereas the date of judgment has wrongly been typed in Para No.8 of the plaint as 27.3.1997. The plaint was filed on 11.3.1997. Exhibit-6 clearly shows that the plaint was filed after expiry of the period of six months, the limitation prescribed by clause (b) of sub-section (1) of Section 109 of the Act of 1994. In these circumstances, I find that the learned trial court has not considered the documents Exhibit-6 and Exhibit-7 as well as the provisions of Section 109 of the Act of 1994 correctly, and wrongly recorded a finding in respect of Issues No.3 and 4 in favour of the plaintiff and against the defendant.

In view of the above, I find that the finding of the trial court in respect of Issues No.3 and 4 are illegal and perverse and the same are liable to be set-aside, and the same are hereby set-aside. These issues are decided against the plaintiff and in favour of the defendant. The Issues No.3 and 4, both, are legal and the same have been decided against the plaintiff, therefore, the suit of the plaintiff is liable to be dismissed, and it is not necessary to consider the other

submissions of learned counsel for the appellant in respect of finding on other Issues.

So far as Appeal No.281/2000 is concerned, it is relevant to mention that Issue No.3 was relating to limitation and Issue No.4 was in respect of notice under Section 31 of the Act of 1961.

I have considered the finding of the trial court in respect of Issues No.3 and 4. The trial court, while deciding Issue No.3, has neither mentioned the date of cause of action nor the date of filing of the suit and only on the basis that the plaintiff was prosecuting his remedy before the Sub Divisional Officer, Munsif and District Judge, therefore, he treated the suit within limitation.

So far as Issue No.4 is concerned, the trial court observed that although the notice under Section 31 of the Act of 1961 has not been given, but meaning of notice is that party should know about the proceedings of the case and on the basis of various proceedings going on in between both the parties before the Sub Divisional Officer, Collector and Munsif, he recorded a finding that there is sufficient notice in the case as required under Section 31 of the Act of 1961. The plaintiff, in Para No.16 of the plaint, pleaded that the suit is within limitation in view of the Article 113 of the Limitation Act, 1963. The plaintiff did not give any reference to notice under Section 109 of the Act of 1994 or notice under Section 31 of the Act of 1961. The plaint was filed against (1) the State Government, (2)

Krishi Upaj Mandi Samiti, (3) Gram Panchayat, Soorwal and (4) Bajranga. It is also relevant to mention that a notice under Section 80 of the Civil Procedure Code is also required to be given where the suit is filed against the State Government, but there is no pleading that notice under Section 80 of the CPC was given to the State Government.

Section 109 of the Act of 1994 has already been reproduced above. For ready reference Section 31 of the Act of 1961 is reproduced as under:-

> **"31. Bar of suit in absence of notice**.- (1) No suit shall be instituted against any market committee or any member, officer or servant thereof or any person acting under the direction of any such market committee, member, officer or servant for anything done or purporting to be done in good faith as such member, officer or servant under this Act until the expiration of two months next after notice in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims, has been, in the case of a market committee delivered or left at its office and, in the case of any such member, officer, servant or person as aforesaid, delivered to him or left at his office or usual place of abode and the plaint shall contain a statement that such notice has been so delivered or left.
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> (2) Every such suit shall be dismissed unless it is instituted within six months from the date of the accrual of the alleged cause of action."

The above provisions make it clear that before instituting a suit against any market committee or any member, officer or servant thereof, a notice of two months is required to be given before institution of any suit or any other civil proceeding.

Under Clause (b) of sub-section (1) of Section 109 of the Act of 1994, the period of limitation is prescribed as six months. Similarly, sub-section (1) of Section 31 of the Act of 1961 makes it clear that before institution of any suit against Krishi Upaj Mandi Samiti, a notice of 2 months is required to be given and the period of limitation for filing suit is six months under sub-section (2) of Section 31 of the Act of 1961. The requirement of notice under sub-section (1) of Section 31 of the Act of 1961 is statutory one, which cannot be ignored. There is no reference in the plaint that notice under Section 109 of the Act of 1994 or Section 31 of the Act of 1961 was given. There is no mention that notice under Section 80 of the CPC was given to the State Government also. These are statutory requirement and without complying with all these statutory requirements, the suit against the State Government or the Rajasthan Panchayat Raj Institution i.e. Gram Panchayat or Krishi Upaj Mandi Samiti could not have been instituted. The trial court did not consider the basic requirement of Statute while deciding Issue No.4, and wrongly decided it in favour of the plaintiff and against the defendants. Therefore, the finding of the trial court in respect of Issue No.4 is liable to be set-aside and the same is hereby set-aside.

So far as finding in respect of Issue No.3 relating to limitation for filing the suit is concerned, there is no dispute that the plaintiff was aware about allotment of land since the very beginning as he filed an appeal before the Collector, which was dismissed on 29.5.1985; he also approached Civil Court by filing a suit which was also dismissed; he thereafter filed a writ petition before this Court which was allowed on 27.3.1996, whereas admittedly the present suit was filed on 22.10.1997. Although the jurisdiction cannot be treated as continuing proceedings of the civil proceedings but even if it is assumed that it was continuing proceedings for the sake of argument then the writ petition was allowed on 27.3.1996 but no suit for damages was filed within a period of six months i.e. up to 27.9.1996 but the suit was filed on 22.10.1997 i.e. much after expiry of period of limitation. The learned trial court did not consider the said aspect of the case and wrongly decided Issue No.3 in favour of the plaintiff and against the defendants. In these circumstances, the finding of the trial court in respect of Issue No.3 is also liable to be set-aside. Issues No.3 and 4 both are legal Issues and in view of the aforesaid finding, it is not necessary to discuss the contentions of the learned counsel for the appellant in respect of the finding on other Issues.

In view of the above discussion, reasons and findings in respect of Issues No.3 and 4 in both the cases, both the suits filed by the plaintiffs were liable to be dismissed.

Consequently, both the appeals are allowed and both the impugned judgments passed by the trial court are set aside. Both the suits filed by both the plaintiffs are dismissed with no order as to costs throughout.

(N.K. Jain) J.

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